

**ATTACHMENT 2**

**ENVIRONMENTAL ASSESSMENT**

## **ENVIRONMENTAL ASSESSMENT OF AMENDMENT TO 10 CFR 50.55a, "CODES AND STANDARDS"**

### **Incorporation by Reference of ASME BPV AND OM Code Cases**

In accordance with 10 CFR Part 51, this document presents the findings of NRC's environmental assessment of a final rule on the incorporation by reference of ASME BPV and OM Code cases. The NRC is amending its regulations to incorporate by reference certain American Society of Mechanical Engineers (ASME) Code cases which the NRC has reviewed and found acceptable for use. These Code cases provide alternatives to requirements in Section III and Section XI of the ASME *Boiler and Pressure Vessel Code* (BPV Code) and the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) pertaining to inservice inspection, inservice testing, and construction of nuclear power plant components. This action will incorporate by reference the current versions of NRC-developed regulatory guides (RGs) which address NRC review and approval of ASME-published Code cases. Concurrent with this action, the NRC is publishing RGs addressing NRC approval of ASME BPV Code cases and the OM Code cases. The NRC-approved Code cases are then accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code, which are already incorporated by reference in the NRC's regulations.

NRC's regulations for implementing Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), as amended, are contained in Subpart A of 10 CFR Part 51. These regulations require that an environmental impact statement or an environmental assessment be prepared for all licensing and regulatory actions that are not classified as "categorical exclusions" in accordance with 10 CFR 51.22(c) and are not identified in 10 CFR 51.22(d) as not requiring environmental review.

### **Identification of the Action**

The ASME publishes Code cases for Section III and Section XI quarterly and Code cases for the OM Code yearly. These Code cases are alternatives to the ASME BPV Code and OM Code requirements and often reflect improvements in technology, new information, or improved procedures. In the past, it was the NRC staff's practice to review these Code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC facility licensees. These Code cases were then listed in RGs, which were revised periodically together with information on their acceptability. Footnote 6 in 10 CFR 50.55a states that the RGs list those Code cases which have been determined by the staff to be "suitable for use." No specific date or version of the RGs were listed, and these RGs were not approved by the Director of the Office of the Federal Register (OFR) for incorporation by reference into the *Code of Federal Regulations*.

The NRC's practice of generally approving ASME Code cases through RGs which are not incorporated by reference may not be consistent with the requirements of the Administrative Procedure Act (APA) (5 U.S.C. 551 et seq.), as amended. The ASME Code cases provide alternatives to compliance with the provisions of the ASME Codes, as opposed to interpretations of those provisions. Because the current practice of generally referencing the RGs addressing the ASME Code cases may not fully satisfy the notice and comment provisions of the APA, the NRC is amending its regulations so that the RGs which list the ASME Code cases that have been approved by the NRC are incorporated by reference into 10 CFR 50.55a. This action accords the NRC-approved alternative Code cases the same legal status as the

ASME BPV Code and the OM Code requirements that are incorporated by reference in 10 CFR 50.55a.

### **Need for the Action**

Because the practice of generally referencing the RGs may not fully satisfy the notice and comment provisions of the APA, the NRC is including these Code cases in the Commission's regulations by incorporating the RGs by reference. This action will accord the NRC-approved alternative Code cases the same legal status as the ASME BPV Code and the OM Code requirements that are incorporated by reference in 10 CFR 50.55a.

### **Environmental Impacts of the Action**

This rule applies only to Part 50 licensees of operating nuclear power reactors. This rule amends NRC's regulations to incorporate by reference three RGs that list ASME Code cases approved by the NRC and the conditions, if any, of such approvals. Code cases provide alternatives to specific ASME Code requirements. These alternatives may involve the use of advanced technology or procedures or new information not available when the Code editions or addenda were approved. Thus, the use of Code cases as alternatives to ASME Code requirements can enhance safety or reduce the probability that the public will be exposed to radiation. Although some Code cases represent a relaxation of Code requirements, the NRC believes that this rulemaking does not increase the probability or consequences of accidents, affect the types of effluents that might be released offsite, increase occupational exposure, or increase public radiation exposure. Therefore, the NRC does not expect significant radiological impacts from this action.

These rule changes do not increase the probability or consequences of accidents, do not involve a significant increase in the amounts or types of any effluents that may be released off site, and do not significantly increase occupational or public radiation exposures. Therefore, no significant radiological environmental impacts are associated with these changes. The rule changes do not involve nonradiological plant effluents and have no other environmental impact. Therefore, no significant nonradiological environmental impacts are associated with this rulemaking.

### **Alternatives to the Action**

As required by Section 102(2)(E) of the NEPA (42 U.S.C.A. 4332(2)(E)), the NRC has considered possible alternatives to the proposed action. The staff considered the following alternatives to the proposed rulemaking:

#### Alternative 1 - Take No Action

Most environmental assessments include a status quo option for the Commission's consideration. However, the staff does not recommend that the Commission consider this alternative because the Office of the General Counsel (OGC) has advised that maintaining the status quo would involve litigative risk and might be interpreted as a violation of the APA.

#### Alternative 2 - Incorporate by Reference NRC-Approved ASME BPV Code and OM Code Cases

Alternative 2 consists of incorporating by reference the RGs on the NRC-approved Code cases. This alternative involves removing Footnote 6 (and all references thereto) from 10 CFR 50.55a, and incorporating the RGs addressing NRC approval of ASME BPV Code and OM Code cases by reference into NRC's regulations. This allows licensees to implement these Code cases and their conditions and modifications. This alternative begins a process of periodic rulemakings to incorporate by reference in 10 CFR 50.55a the latest RGs which list all acceptable and conditionally acceptable ASME Code cases. This alternative provides a sound regulatory basis for NRC's approval of the generic use of Code cases by licensees as alternatives to the provisions of the ASME Codes as incorporated by reference in the NRC regulations. The staff will prepare periodic rulemakings to keep the regulations current with the latest versions of the RGs. Based on consultations with OGC and officials from the OFR, this approach meets OFR guidelines for incorporation of documents by reference in the *Code of Federal Regulations*.

Pursuing this alternative meets the NRC goal of maintaining safety by continuing to provide NRC approval of new ASME Code cases. It reduces unnecessary regulatory burden by eliminating the need for licensees to submit plant-specific relief requests and for NRC to review those submittals.

This alternative will also increase public confidence by indicating the NRC's acceptance of Code cases as alternatives to the provisions of the ASME Codes.

This rulemaking and subsequent updates will involve some additional burden to the NRC. This burden will be more than offset by the reduction in the number of relief requests that the staff will be obligated to process. Also, the staff will explore the feasibility of issuing direct final rules to update the revision numbers of the revised RGs that address Code cases.

### Alternative 3 - Discontinue Review and Approval of Code Cases on a Generic Basis

Under this alternative, the staff would review individual relief requests by licensees for use of Code cases as alternatives to the requirements in the ASME BPV Code or the OM Code. Rulemaking to remove Footnote 6 from 10 CFR 50.55a would still be required. However, the staff would not prepare rulemakings to incorporate by reference the RGs listing NRC-approved Code cases. Instead, the staff would review requests to use ASME Code cases on a plant-specific basis.

This process would continue to maintain safety. However, this approach would result in additional regulatory burden because each licensee would need to submit a request for relief to apply an ASME Code case, even if other licensees have sought and been granted this relief.

Alternative 3 could have an adverse effect on public confidence by creating a perception that the NRC does not have uniform approach to reviewing and approving the use of ASME Code cases. Also, the process for approving individual relief requests would not readily provide an opportunity for public involvement.

### **Agencies and Persons Consulted**

The NRC staff developed the final rule and this environmental assessment.

**Finding of No Significant Impact**

On the basis of this environmental assessment, the Commission concludes that this action will not have a significant effect on the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the action.